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December 13, 2021

By ECF

Honorable John P. Cronan
United States District Judge
Southern District of New York

Re: United States v. Roberto Acevedo, 21 Cr. 30 (JPC)

Dear Judge Cronan:

I write to respectfully request that the Court order the sealing of the highlighted portions of the sentencing transcript in this matter (attached as Ex. A). The highlighted portions (on pages 12, 13, 15, 24, and 29) are discussions of [REDACTED] and so should be sealed. The Government has reviewed the proposed redactions and consents to them.

Thank you for your attention to this matter.

Respectfully submitted,

/s/ Jonathan Marvinny
Jonathan Marvinny
Assistant Federal Defender
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cc: Peter J. Davis, Esq.
Assistant United States Attorney

This request is granted. The Court finds that the redactions are narrowly tailored to serve law enforcement concerns, judicial efficiency, and privacy interests. *See United States v. Amodeo*, 71 F.3d 1044, 1048-53 (2d Cir. 1995).

SO ORDERED.

Date: December 14, 2021

New York, New York


JOHN P. CRONAN
United States District Judge

EXHIBIT A

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----X

3 UNITED STATES OF AMERICA,

4 v.

21 CR 30 (JPC)

5 ROBERT ACEVEDO,

6 Defendant.

7 -----X

8 New York, N.Y.
9 October 28, 2021
2:00 p.m.

10 Before:

11 HON. JOHN P. CRONAN,

12 District Judge

13
14 APPEARANCES

15 AUDREY STRAUSS

16 Acting United States Attorney for the
Southern District of New York

17 PETER DAVIS

Assistant United States Attorney

18 JONATHAN MARVINNY

19 Attorney for Defendant Acevedo
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1 (Case called)

2 MR. DAVIS: Good afternoon, your Honor.

3 Peter Davis, for the government.

4 THE COURT: Good afternoon, Mr. Davis.

5 MR. MARVINNY: Good afternoon, your Honor.

6 Federal Defenders of New York, by Jonathan Marvinny,
7 for Mr. Roberto Acevedo.

8 THE COURT: Good afternoon, Mr. Marvinny and
9 Mr. Acevedo.

10 We're here today to impose sentence in United States
11 v. Roberto Acevedo. Before we begin, we are by joined by a
12 Spanish interpreter.

13 I will ask the interpreter to, please, identify
14 herself.

15 THE INTERPRETER: Nancy I. Adler.

16 Good afternoon, your Honor. I'm federally certified
17 in my office and the office.

18 THE COURT: Good afternoon, Ms. Adler.

19 Mr. Acevedo, are you able to understand the
20 interpreter?

21 THE DEFENDANT: Yes.

22 THE COURT: And if at any point during today's
23 proceeding if you are having trouble understanding, please, let
24 me know and we will address any problems.

25 THE DEFENDANT: Of course.

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1 THE COURT: Mr. Acevedo pled guilty before me on
2 July 27, 2020, pursuant to a plea agreement with the United
3 States Attorney's Office. He pled guilty to the only count of
4 the indictment. That count charged him with participating in a
5 conspiracy to distribute and to possess with the intent to
6 distribute 500 grams and more of cocaine in violation of Title
7 21 U.S.C. Sections 846 and 841 (b)(1)(b).

8 In preparation for today's sentencing I've reviewed
9 the presentence investigative report dated October 15, 2021. I
10 have also received and reviewed submissions from the parties.
11 I've reviewed the defendant's submission dated October 14th,
12 2021. That includes a brief signed by Mr. Marvinny, as well as
13 several attachments, a letter from Mr. Acevedo's long time
14 partner, Elanda Acevedo; a letter from Mr. Acevedo's nephew,
15 Neil Garcia; a letter from Mr. Acevedo's niece, Charlene Bruno;
16 and a letter from Ms. Bruno's husband, Eric Wells. I also have
17 received and reviewed the government submission for Mr. Davis,
18 dated October 16, 2021.

19 Have the parties received and reviewed each of these
20 submissions, Mr. Marvinny?

21 MR. MARVINNY: Yes, your Honor.

22 THE COURT: Mr. David?

23 MR. DAVIS: No, your Honor.

24 THE COURT: Have there been any other submissions in
25 connection with this sentencing that I have not mentioned?

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1 MR. MARVINNY: No, your Honor.

2 MR. DAVIS: No, your Honor.

3 THE COURT: It appears that all the materials have
4 been publically filed.

5 Are there any reasons they should not remain publicly
6 filed, Mr. Marvinny?

7 MR. MARVINNY: No, your Honor. In our filing there
8 was a portion that was redacted but the materials have been
9 publicly filed and there is no reason they shouldn't be.

10 THE COURT: Trying too remember what was redacted but
11 whatever is public I'll adopt it and remain public as adopted.

12 MR. MARVINNY: Yes, your Honor.

13 THE COURT: You agree, Mr. Davis?

14 MR. DAVIS: Yes, your Honor.

15 THE COURT: Mr. Davis, also the plea agreement
16 mentioned that the defendant admitted the forfeiture allegation
17 in the indictment.

18 Is there a proposed order of forfeiture?

19 MR. DAVIS: There is no forfeiture, your Honor.

20 THE COURT: Let's turn to the presentence
21 investigative report.

22 Mr. Marvinny, have you read the report?

23 MR. MARVINNY: Yes, your Honor.

24 THE COURT: Have you discussed it with Mr. Acevedo?

25 MR. MARVINNY: Yes.

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1 THE COURT: Mr. Acevedo, let me ask you that as well.
2 Have you also read the presentence investigative
3 report?

4 THE DEFENDANT: Yes.

5 THE COURT: And was that report translated in Spanish
6 for you?

7 THE DEFENDANT: I was able to understand as much as
8 possible and in English and other people translated it for me.

9 THE COURT: And have you been able to discuss that
10 report with your attorney?

11 THE DEFENDANT: We've discussed it, yes.

12 THE COURT: And have you had enough time and
13 opportunity to review the presentence report and discuss it
14 with Mr. Marvinny?

15 THE DEFENDANT: Well, not specifically but, yes, we've
16 discussed it.

17 THE COURT: And have you had enough time to review the
18 report and discuss it with your attorney?

19 THE DEFENDANT: Yes, yes.

20 THE COURT: And have you been able to go over with
21 your attorney any mistakes or errors that you saw in the
22 report?

23 THE DEFENDANT: I left that in my attorney's hands. I
24 trust that.

25 MR. MARVINNY: Your Honor, if I may? I know

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1 Mr. Acevedo in person he is detained at the Essex County jail.
2 We've reviewed the report. I also speak Spanish myself. We've
3 discussed it in Spanish as well. And Mr. Acevedo, my
4 understanding, was given the opportunity to identify to me any
5 errors or corrections.

6 THE COURT: Mr. Acevedo, did you hear what your
7 attorney just said to me?

8 THE DEFENDANT: Yes, but what's happened is that after
9 COVID my health has been deteriorating and I am not the same
10 person that I was then.

11 THE COURT: Mr. Acevedo, I recall from prior court
12 appearances of course, your health issues. What I just want to
13 make sure about now, Mr. Acevedo, is that you were able to read
14 the report and --

15 THE DEFENDANT: Yes, I did.

16 THE COURT: And if you saw anything that was wrong in
17 the report you were able to tell your attorney about that; did
18 you?

19 THE DEFENDANT: No, no, I did not tell him there was
20 anything mistaken. I read it and I agreed with what it said.

21 THE COURT: And have you always been able to talk with
22 your attorney about any other issues you wished him to raise
23 today at your sentencing?

24 THE DEFENDANT: I did not understand that. Again?

25 THE COURT: Sure. Prior to this afternoon, have you

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1 been able to talk with your attorney and discuss with him
2 anything that you wished for him to tell me today in connection
3 with your sentencing?

4 THE DEFENDANT: Oh, yes. I did speak to him before.
5 We saw each other downstairs.

6 THE COURT: Mr. Davis, have you also reviewed the
7 presentence investigative report?

8 MR. DAVIS: Yes, your Honor.

9 THE COURT: There was one small correction that I
10 think I am going to make to the report that I just want to flag
11 for the parties. On page 17 in the recommendation section, the
12 report says that Mr. Acevedo's bail was revoked as a result of
13 his drug use. That's not accurate really. While there was a
14 violation report filed, that was not the reason bail was
15 revoked. Bail was revoked after his guilty plea pursuant to 15
16 U.S.C. Section 3143 (A) (2). So, I am inclined to correct that
17 sentence so an institution doesn't later see the report and
18 thinks that there was a drug violation that revoked his bail.

19 Is there any concern with making that edit?

20 MR. DAVIS: No, your Honor.

21 MR. MARVINNY: No.

22 Thank you, your Honor.

23 THE COURT: And other than that, are there any other
24 objections to the factual recitation set forth in the report,
25 Mr. Marvinny?

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1 MR. MARVINNY: No, your Honor.

2 THE COURT: Mr. Davis?

3 MR. DAVIS: No, your Honor.

4 THE COURT: Hearing no objections other than the
5 correction I mentioned, I will adopt the factual recitations
6 set forth in the presentence investigative report. The report
7 will be made part of the record in this matter and placed under
8 seal. If an appeal is taken, counsel on appeal may have access
9 to the sealed report without further applications to this
10 Court.

11 Let's turn now to the sentencing guidelines.

12 Although the Court is no longer required to follow
13 U.S. Sentencing Guidelines, I am still required to consider the
14 applicable guidelines in imposing sentence. To do that it is
15 necessary for me to accurately calculate the guideline
16 sentencing range.

17 In this case there was a plea agreement, as I
18 mentioned earlier. In that agreement the parties stipulated to
19 a guidelines offense level of 19, a criminal history category
20 of one and advisory guidelines range of 30 to 37 months.

21 It appears to me that the calculation in the
22 presentence investigative report is consistent what the parties
23 agreed to in the plea agreement.

24 Is that right, Mr. Davis?

25 MR. DAVIS: Yes, your Honor.

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1 THE COURT: Mr. Marvinny?

2 MR. MARVINNY: Yes.

3 THE COURT: Based on the parties' agreement and the
4 absence of any objection and also my independent evaluation of
5 the sentencing guidelines in this case, I will accept the
6 guideline calculation in the presentence report. And just to
7 put that on the record, I find that the total offense level is
8 19. That starts with a base offense level of 24, pursuant to
9 guideline section 2D1.185 and C8 and that is because of the
10 offense involved at least 500 grams but less than two kilograms
11 of cocaine.

12 Two levels are reduced because the defendant qualifies
13 for what is called safety valve release pursuant to Section 2D
14 1.1B18.

15 Another two levels are reduced for acceptance of
16 responsibility given the defendant's timely guilty plea under
17 Section 3B1.1A.

18 Mr. Davis, does the government move for the third
19 point pursuant to Section B?

20 MR. DAVIS: It does.

21 THE COURT: I'll grant that motion and that brings the
22 offense level down to 19.

23 I also agree that the criminal history category is one
24 which reflects one criminal history point that resulted from
25 Mr. Acevedo's March 2016 conviction in the Bronx for driving

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1 while intoxicated. The guidelines range therefore is 30 to 37
2 months imprisonment and a fine range of \$10,000 to \$5,000,000.

3 Let me just pause for one minute.

4 I want to welcome folks here. I do apologize, but I
5 think it's necessary to space out a little bit more in the
6 courtroom. I think there may be some benches back there. We
7 need to keep a bit of a distance between people for COVID
8 reasons. So, maybe if some ever you can go that way.

9 THE INTERPRETER: May I inquire of the defendant if he
10 is hearing?

11 THE COURT: Yes.

12 (Pause)

13 THE INTERPRETER: "Can the interpreter speak more
14 clearly", was requested.

15 THE COURT: I believe that the plea agreement in this
16 case provided that neither party would be seeking a departure
17 from the stipulated guidelines range. I am talking, of course,
18 about departure, what is more commonly known as -- and I
19 understand both.

20 But let me confirm, Mr. Marvinny, does the defendant
21 seek a departure from the range?

22 MR. MARVINNY: No.

23 THE COURT: Mr. Davis?

24 MR. DAVIS: No, your Honor.

25 THE COURT: I also have considered whether there is an

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1 appropriate basis for a departure from the advisory guidelines
2 range. And while recognizing that I have the authority to
3 depart, I do not find any grounds warranting an upward or
4 downward departure in this case and therefore, I decline to
5 depart from the guideline range that I mentioned moments ago.

6 Let me now hear from the parties as to sentencing.
7 I'll start with Mr. Davis and then hear from Mr. Marvinny and
8 if he wishes to speak, Mr. Acevedo as well.

9 MR. DAVIS: Thank you, your Honor. If I may speak
10 just very briefly.

11 The government is seeking a sentence within the
12 stipulated guidelines range for this defendant for largely the
13 reasons set forth in its submission, but I do want to
14 underscore three points of why the government's making that
15 recommendation in this case.

16 The first is a basic one and one that I imagine will
17 not be disputed, which is that Mr. Acevedo engaged in serious
18 conduct. This is drug dealing powder cocaine, drugs that
19 certainly harm our community and can certainly harm those
20 addicted to them.

21 The second reason is because this was an extended
22 period of conduct. This was not a single sale on a single
23 occasion. Instead, this was multiple sales on multiple
24 occasions over the period of months.

25 And third and related to that comment about how this

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1 is an extended period of conduct was, this is not Mr. Acevedo's
2 first criminal conviction. Much of his criminal history is
3 very old. The government will concede that. Indeed, the
4 guidelines reflect that. As in the PSR notes on page 17, this
5 is the defendant's ninth criminal conviction but he has one
6 criminal history point. And so, the government's not arguing
7 that he had recent criminal history.

8 But the point about that is the defendant clearly has
9 not aged out of criminal conduct. And given that this offense
10 happened when the defendant had already been convicted on
11 multiple occasions and had multiple chances to set straight,
12 the government believes that a substantial sentence like the
13 one represented by the stipulated guidelines range is
14 appropriate.

15 THE COURT: Can I ask a couple questions? And I'll
16 ask Mr. Marvinny about this as well.

17 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

23 MR. DAVIS: Your Honor, may I consult with counsel for
24 one second?

25 THE COURT: Yes.

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1 (Pause)

2 MR. DAVIS: So, judge. Thank you for that.

3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]

9 THE COURT: And you agree that that's something that I
10 can take into consideration?

11 MR. DAVIS: Of course, your Honor.

12 THE COURT: And in terms of this individual, this
13 defendant's role in the conspiracy, is it the government's view
14 that his role was to hand the drugs to potential buyers or was
15 there an additional role?

16 MR. DAVIS: Your Honor, I believe that's an accurate
17 description of his role.

18 THE COURT: Thank you, Mr. Davis.

19 Mr. Marvinny.

20 MR. MARVINNY: Thank you, your Honor.

21 Let me start with the points Mr. Davis made that I
22 don't dispute, which is that this was serious conduct and that
23 it occurred over a relatively long period of time. It spanned
24 some portion of two years. It's not the lengthiest conduct
25 ever but it's true. I agree with the government on those.

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1 I take issue with the government's position on
2 Mr. Acevedo's criminal history. Although, I understand the
3 idea that Mr. Acevedo hasn't aged out of criminality,
4 obviously, since he sitting here today. I do think that
5 Mr. Acevedo has a, that the relative lack of severity of his
6 criminal history is noteworthy for a 63-year-old defendant.

7 Most importantly, your Honor, not only does he just
8 have one criminal history point, his longest prior sentence was
9 60 days in prison. So, even though his criminal history goes
10 back many, many years, he's never received a sentence longer to
11 longer than two months and that sentence was in 1982, some 40
12 years ago.

13 I know a lot of courts and judges are concerned with
14 the principle of incremental punishment and so that any
15 sentence the Court imposes today I think would satisfy that
16 principle. I'm not excusing Mr. Acevedo's criminal history. I
17 do think it is in the main indicative of someone who struggled
18 with substance abuse and poverty. He's got a lot of state
19 court misdemeanors, trespass, things like that. That is not
20 the entirety of his record but it certainly is a large portion
21 of it. So, I do think his criminal history or lack of criminal
22 history is mitigated.

23 We've asked for a sentence of a year and a day, your
24 Honor. I'd just like to briefly underscore why I think that's
25 appropriate. It's obviously in our submission. And of course,

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1 point one is what I just said, which is Mr. Acevedo's relative
2 lack of criminal history. [REDACTED]

3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 Third, your Honor, returning to Mr. Acevedo's offense,
8 now we concede it's serious and involved a large amount of
9 cocaine, it is the case that Mr. Acevedo conducted hand-to-hand
10 sales to an undercover and that there was no violence involved.

11 Fourth, your Honor, Mr. Acevedo, as this Court knows
12 and as this Court acknowledged at the outset, is 63-years-old
13 and in poor health. He is in very poor health. We have had
14 lengthy discussions about Mr. Acevedo's umbilical hernia and
15 that condition at the time of his guilty plea. Unfortunately,
16 that condition is growing worse. He has not received a surgery
17 for that condition yet. We are working with Essex County to
18 try to make that happen but he hasn't received it yet.

19 The umbilical hernia is not the only medical condition
20 Mr. Acevedo suffers from. Mr. Acevedo has severe and chronic
21 back pain. He has hypertension. He is obese. He also, your
22 Honor -- and this is another point I'll make -- is dependent on
23 opioids. He was in methadone maintenance at the time of his
24 arrest and he is now receiving some type of methadone
25 maintenance at Essex County although it's a fairly diminished

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1 amount. Mr. Acevedo struggled with that and feels sick
2 frequently.

3 And for all of those reasons his period of
4 incarceration has already been pretty onerous for him. So, we
5 ask the Court to take that into account.

6 THE COURT: Mr. Marvinny, after the hernia surgery,
7 you are still working with Essex about that?

8 MR. MARVINNY: Yeah. Your Honor, initially,
9 Mr. Acevedo expressed some hesitance to have his surgery
10 performed while in jail. The condition has gotten worse since
11 then and I think he's revised his view and he has asked Essex
12 County to facilitate the surgery. They are aware of his
13 condition and it's all over his medical records, but they have
14 not yet -- I am just reporting.

15 In terms of reasons, I think a year and a day is
16 justified but suffice to say, regarding the offense again,
17 Mr. Acevedo was abusing heroin at the time of the offense and
18 we think that that's mitigating as well.

19 Finally, your Honor, and in some ways among the most
20 important reasons, Mr. Acevedo is very likely to be deported to
21 the Dominican Republic at the conclusion of his prison term. I
22 think that is not something his family wants to hear. It's not
23 something Mr. Acevedo wants to hear. Unfortunately, I think it
24 is likely, your Honor, a country Mr. Acevedo has not lived in
25 someone since he was 12-years-old. He obviously has very

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1 strong family support. That's evident today in court. For the
2 record, there are some 15 to 20 family members and friends in
3 court today for Mr. Acevedo. It's going to be a severe blow
4 for them and for him to be deported. The Second Circuit has
5 made clear that the Court could consider that additional
6 punishment in factoring a sentence.

7 So, for all of those reasons, your Honor, this is a
8 sad day for Mr. Acevedo. Without excusing any of his criminal
9 conduct, I don't want to put that to the side but from his
10 perspective it's a terribly sad day. He's kind of a sad man in
11 many ways. I am very fond of him but he hasn't had it easy,
12 hasn't made it easy on himself. So, we are asking the Court
13 for some measure of mercy here. We respectfully suggest a year
14 and a day.

15 THE COURT: Mr. Marvinny, let me ask you a little
16 more. I understand the point in your submission that as a
17 general matter recidivism rates decrease as an individual gets
18 older and approaches Mr. Acevedo's age. But here we have, we
19 don't seem to have that and we have probably the most serious
20 conviction occurring in his early 60s -- a little more about
21 how you think I should treat and how he didn't aged out of
22 crime.

23 MR. MARVINNY: Understood, your Honor. Well, I'd say
24 that first there's the practical matter that he is going to be
25 most likely living in another country and so, isn't really a

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1 threat to break U.S. law again. It's just a practical basic
2 consideration.

3 Next, I will say, I think the difference here is that
4 Mr. Acevedo got into heroin pretty seriously about eight years
5 ago and there is know no doubt, I think there's no doubt that
6 his heroin addiction motivated a large portion of the instant
7 offense, and can't be kind of separated from what he did and
8 that's a kind of different circumstance that came to him later
9 in life.

10 Next, your Honor, it's hard to say, it's only been a
11 month or so that he has been incarcerated but I think this,
12 which again, is already approaching the longest time he's spent
13 in prison and it's been a real wake-up call for Mr. Acevedo he
14 sees as never before the consequences of criminal activity.
15 Whatever sentence your Honor gives him, as I said, will be his
16 longest sentence and he will be chasing by it. It has rocked
17 him to his core, the fact that he is not only going to serve a
18 prison sentence but that he is going to be taken away from his
19 family. So, I guess in basic terms, if he hasn't learned his
20 lesson yet, by the time this is over he will be a little bit
21 older, it is our hope that he will have learned his lesson.
22 So, I guess this is what takes him out of, what separates him
23 from any other 63-year-old who is committing crimes.

24 THE COURT: Mr. Marvinny, probation recommends the
25 following conditions of supervised release, including a search

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1 condition and outpatient treatment. Now taking your point that
2 there may not be effectively supervised release if he is put in
3 removal proceedings. But what is the defendant's view on those
4 two recommendations, the search condition and outpatient
5 treatment?

6 MR. MARVINNY: We don't object to them. We think they
7 are appropriate. And I should say depending on the length of
8 the sentence, either way we are going to ask the Court to
9 recommend the RDAP program for Mr. Acevedo during his
10 incarceration term. I think also speaks to, there is no doubt
11 he needs drug treatment.

12 THE COURT: Before I go to Mr. Acevedo, let me turn
13 back to Mr. Davis briefly.

14 What is the government's view on whether I should
15 consider the possibility of removal in imposing a sentence?

16 MR. SNAO: I think the Court will certainly take into
17 consideration under 3553(a) any factor it deems relevant
18 including additional consequences to the conviction as
19 Mr. Marvinny says. For the reasons we said previously, we
20 don't think that that is a mitigating factor that overrides the
21 other aggravating factors.

22 And for those reasons, stand by his recommendation.

23 THE COURT: Okay. Mr. Marvinny, if you don't have
24 anything else, I'll hear from your client if Mr. Acevedo wishes
25 to say anything.

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1 MR. MARVINNY: That's fine.

2 Thank you.

3 THE DEFENDANT: Yes.

4 Your Honor, I would like to tell you that I am
5 remorseful for what I've done. I have committed small mistakes
6 before but now I'm more aware. Now I've learned my lesson and
7 so I would like you to forgive me. I've already learned my
8 lesson.

9 And thank you.

10 THE COURT: Thank you, Mr. Acevedo. Bear with me for
11 a moment.

12 (Pause)

13 THE COURT: Let me ask counsel if there's any reason
14 why sentence should not be imposed at this point?

15 MR. DAVIS: No, your Honor.

16 MR. MARVINNY: No, your Honor.

17 THE COURT: I begin with the question of whether a
18 mandatory minimum applies in this case? Mr. Acevedo was
19 convicted of conspiring to distribute and possess with intent
20 to distribute 500 grams and more of cocaine in violation of 21
21 U.S.C. Sections 846 and 841 (B) (1) (D). Normally, this
22 offense will require a mandatory minimum sentence of five years
23 in prison. However, I find that Mr. Acevedo qualifies for
24 relief from that minimum because he meets the criteria set
25 forth in 18 U.S.C. Section 3553 (F) (1) through (F) (5). I

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1 will Therefore sentence him without regard to any statutory
2 minimum sentence.

3 I have to explain the factors I have considered in
4 arriving at the defendant's sentence. First, as I mentions
5 earlier and as required, I have considered his advisory
6 guidelines range, which is 30 to 37 months. Under the Supreme
7 Court's decision in Booker and cases that followed Booker, that
8 guidelines range is only one factor that I must consider in
9 deciding the appropriate sentence.

10 I also am required to consider the other factors set
11 forth in Title 18 U.S.C. Section 3553(a). Those factors
12 include the nature and circumstances of the offense and history
13 and characteristics of the defendant.

14 I also must just consider the need for the sentence
15 imposed to reflect the seriousness of the offense, to reflect
16 respect for the law and to provide just punishment for the
17 offense, the need for the sentence to afford adequate
18 deterrence of criminal conduct, to protect the public from
19 further crimes of the defendant and to provide the defendant
20 with needed educational and vocational training and medical
21 care and other correctional treatment in the most effective
22 manner. I must impose a sentence that is sufficient but not
23 greater than necessary to comply with those purposes.

24 I must also consider the kinds of sentences available,
25 the guidelines range, any permanent policy statements, the need

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1 to avoid unwarranted sentence disparities among defendants with
2 similar records who have been found guilty and the need to
3 provide restitution to any victims of the offense.

4 I have given substantial thought and attention to each
5 of these factors in arriving at the sentence.

6 I'll begin with the nature and circumstances of the
7 offense, as well as the need for the sentence to reflect the
8 seriousness of the offense and to provide just punishment for
9 the offense, and those factors do weigh strongly in favor of a
10 significant term of imprisonment.

11 Over multiple months from August 2019 through
12 February 2020, Mr. Acevedo illegally sold cocaine to an
13 undercover law enforcement officer. He first sold small
14 amounts during totally three and a half grams on August 13,
15 2019, and eventually sold much larger quantities.

16 On November 21, 2019, he sold 50 grams of cocaine to
17 the undercover officer. On January 3, 2020, he sold 100 grams
18 to the undercover officer. And on February 14, 2020, he sold
19 57 grams to the undercover officer. In total, Mr. Acevedo was
20 responsible for distributing about 747 grams of cocaine. And
21 on one of the occasions, on February 14, 2020, he also gave the
22 undercover officer a sample of heroin, providing that officer
23 with three glassines of narcotics.

24 Obviously, the distribution of highly addictive
25 potentially deadly lethal drugs is extremely serious criminal

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1 conduct can cause a significant term of incarceration.
2 Congress of course has recognized as much if not from
3 Mr. Acevedo's eligibility for safety valve relief, I would have
4 no discretion to sentence to anything less than five years in
5 prison.

6 Now, I also note however, that there are no
7 information for me that Mr. Acevedo played a leadership or
8 senior role in the drug conspiracy. The scheme involving the
9 handing over and distributing the narcotics, in this case to an
10 undercover law enforcement office.

11 There is also the need for both specific deterrence
12 and for the sentence to promote respect for the law. I
13 understand Mr. Marvinny's point that in the event that
14 Mr. Acevedo is removed from the United States, this
15 consideration may not be as strong but I do think there is a
16 need for deterrent and to promote respect for the law in this
17 case.

18 While Mr. Acevedo is eligible for safety valve relief
19 he has only one criminal history point under the guidelines
20 from a 2016 driving while intoxicated condition, that is not to
21 say he has not otherwise committed crimes in his life time.
22 The fact that he has relevant lengthy criminal history. Almost
23 all of his prior crime occurred a long ago to account for his
24 guidelines his criminal history but it still occurred.

25 As noted in the presentence report, he has no

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1 convictions since he was 23, or any prior convictions since he
2 was 23. Those were narcotics convictions, possession of a
3 firearm which again was a long time ago back in 1981 and a 2001
4 conviction for attempted assault in the second degree after
5 stabbing someone with a kitchen knife.

6 While I appreciate your point that recidivism rates
7 generally decrease among older offenders, I am concerned that
8 that trend does not seem to apply here. Given that Mr Acevedo
9 participated in this conspiracy in his early 60s, suggests that
10 he may not have aged out of committing crimes.

11 Now, I also have considered the history and
12 characteristics of Mr. Acevedo. Mr. Acevedo appears to have
13 suffered from substance for most of his life. That may very
14 well have contributed to the commission of the instant offense.
15 He also appears to suffered from various health conditions
16 including a hernia that we discussed at prior court appearances
17 which may require surgery and also issues that Mr. Marvinny
18 mentioned regarding the fact he has hypertension, among other
19 ailments.

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 I will now state the sentence that I intend to impose.

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1 Mr. Acevedo, would you, please, stand. Mr. Acevedo,
2 it is the judgment of this Court that you are remanded to
3 custody of the Bureau of Prisons for 20 months, to be followed
4 by a period of four years of supervised release following any
5 term of imprisonment. I conclude that is a sentence that is
6 suffer but not greater than necessary to achieve the purpose of
7 sentencing and those are for the reasons I just went through.

8 Mr. Acevedo, if you wish, you may now be seated while
9 I read the conditions of your supervised release that you must
10 comply with and other details of your sentence.

11 You will be supervised -- and again, this is upon your
12 release from custody and if you're released into the community,
13 you will supervised in the district of your residence. The
14 standard conditions of supervised release shall apply. They
15 are on pages 19 and 20 of the presentence investigative report.

16 Mr. Marvinny, Mr. Acevedo, would you like me to read
17 those conditions out loud for you?

18 THE DEFENDANT: It's not necessary. I can read them
19 later.

20 THE COURT: Okay. Mr. Marvinny, is that okay with
21 you?

22 MR. MARVINNY: That's fine. And we have reviewed
23 them.

24 THE COURT: Thank you.

25 I will therefore assume that Mr. Acevedo and the

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1 attorneys in this case have read the standard conditions given
2 Mr. Marvinny's presentation and my discussion earlier regarding
3 the presentence report.

4 In addition to those standard conditions, Mr. Acevedo,
5 you will be subject to certain mandatory conditions.

6 You must not commit another federal, state or local
7 crime.

8 You must not illegally possess a controlled substance.

9 I will impose a special condition requiring drug
10 treatment and testing. I will suspend the mandatory drug
11 testing condition and you must cooperate in the collection of
12 DNA as directed by the probation officer.

13 You must also meet certain special conditions of
14 supervised release. I'll mention those now.

15 You must submit your person and any property,
16 residence, vehicle, papers, computer, other electronic
17 communication, data storage devices, file storage or media in
18 effect to a search by any U.S. probation office, and if needed,
19 with the assistance of any law enforcement.

20 The search will be conducted when there is a
21 reasonable suspicion concerning violation of conditions of
22 supervision or unlawful conduct by the person being supervised.

23 Failure submit to a search may be grounds for
24 revocation of release.

25 You shall warn any other occupants that the premise

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1 may be subject to searches pursuant to this condition.

2 Any search shall be conducted at a reasonable time and
3 in a reasonable manner.

4 Next, given your prior drug use, you must participate
5 in an outpatient treatment program approved by the United
6 States Probation Office, which program may include testing to
7 determine whether you reverted to using drugs and alcohol.

8 You must contribute to the cost of services rendered
9 in an amount determined by the probation officer based on your
10 ability to pay and the availability of third party payment.

11 I authorize the release of available drug treatment
12 evaluation and reports included in the presentence
13 investigation report to the substance abuse treatment provider.

14 And also, you must obey immigration laws and comply
15 with the directives of immigration authorities.

16 There is no restitution or forfeiture in this case. I
17 am not going to impose a fine because I find that you do not
18 have the ability to pay it.

19 Lastly, I impose a mandatory special assessment of
20 \$100, which shall be due immediately.

21 I also will include the recommendation that
22 Mr. Acevedo participate in the RDAP treatment program.

23 Mr. Marvinny, has that been --

24 MR. MARVINNY: Yes. Thank you.

25 THE COURT: Does either counsel know of any reason why

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1 the sentence shall not be imposed as stated?

2 MR. DAVIS: No, your Honor.

3 MR. MARVINNY: No, your Honor.

4 THE COURT: I will order the sentence I have described
5 to be imposed as stated. I find the sentence is sufficient but
6 not greater than necessary to satisfy the sentencing purposes
7 set forth in 18 U.S.C. Section 3553(a) (2), including the need
8 to promote respect for the law, to provide just punishment for
9 the offense, to afford adequate deference of the defendant and
10 others, and to protect the public from further crimes of the
11 defendant.

12 Mr. Davis, are there any open counts?

13 MR. DAVIS: No, your Honor.

14 THE COURT: Mr. Acevedo, I advise you that you have
15 the right to appeal from the judgment imposed and sentence to
16 whatever extent you have not waived it. If you are unable to
17 pay for the cost of an appeal, you may apply leave to appeal in
18 forma pauperis. If that application were granted, you would be
19 permitted to appeal without payment of any fees. The notice of
20 appeal must be filed within 14 Davis of the judgment of
21 conviction.

22 Mr. Acevedo, the sentence I imposed reflects the
23 seriousness of your crime.

24 I also impose a sentence that's quite a bit lower than
25 what the guideline range otherwise provided.

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1 When you are released from prison, I don't know what
2 is going to be next for you in terms of immigration
3 consequences, but I do hope that you have many years ahead of
4 you and plenty of opportunity to live a productive and
5 law-abiding life.

6 The courtroom is as crowded as it's been here in two
7 years because of you, because people who love you and are
8 supporting you. Thank you.

9 I thank everyone for attending and I wish you all the
10 best.

11 Anything else further?

12 MR. DAVIS: Nothing further, your Honor.

13 MR. MARVINNY: Your Honor, I would move to seal the
14 transcript of today's proceeding?

15 MR. DAVIS: No objection.

16 THE COURT: The entirety transcript?

17 MR. MARVINNY: [REDACTED]
18 [REDACTED]

19 THE COURT: I will seal the transcript.

20 Within a week, Mr. Marvinny, can you provide a
21 redacted version of what you wish to have sealed and if you
22 need more than a week in particular by the time we get a copy
23 of the transcript. I don't want to impose on the reporter.
24 But if you need more than a week it's certainly fine but send
25 me what you propose to have redacted.

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1 MR. MARVINNY: Will do.

2 Thank you, your Honor.

3 THE COURT: All right. Thank you, everyone.

4 This proceeding is adjourned. Good afternoon.

5 (Adjourned)

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